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BILL NO.:	House Bill 1419 – Electric Distribution System Support Services – Cost Recovery and Energy Storage
COMMITTEE:	Economic Matters Committee
HEARING DATE:	March 13, 2025
SPONSOR:	Delegate Fraser-Hidalgo
POSITION:	Informational

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The Office of People's Counsel ("OPC") respectfully offers the following informational comments on House Bill 1419. As drafted, HB 1419 sought to add two new provisions to the Distributed Renewable Integration and Vehicle Electrification Act of 2024 ("DRIVE Act"). One provision, proposed subsection 7-1007(b), would unnecessarily increase the cost of DRIVE Act programs by requiring the use of regulatory assets for the recovery of all program costs. The other provision, proposed subsection 7-1105(g), is unnecessary because it simply states the current law. OPC appreciates the opportunity to work with the sponsor on the bill and supports the anticipated sponsor amendment to remove the first provision, proposed subsection 7-1007(b). With this amendment, HB 1419 avoids burdening already over-burdened utility customers with unnecessary costs.

Background

The DRIVE Act was enacted in 2024 as House Bill 959 and is codified at Title 7, Subtitle 10 of the Public Utilities Article. Section 7-1005 of the Act requires the Public Service Commission ("PSC") to develop a program for Maryland's investor–owned electric utilities to establish a pilot program or temporary tariff to compensate owners and aggregators of distributed energy resources ("DER") for electric distribution system support services. Compensation is to be made "through an incentive mechanism determined by the Commission." Section 7-1006 authorizes the PSC to approve or require utilities to offer upfront incentives or rebates to customers to acquire and install

renewable on-site generating systems if the customer enrolls in utility programs or temporary tariffs and allows their system to be used for support services for a period of not less than five years. Section 7-1007 of the Act provides for utility cost recovery of DRIVE Act program costs. In present form it states that electric utilities "may recover all reasonable costs incurred in: (1) participating in and administering a program under § 7-1005 of this subtitle; and (2) offering an upfront incentive or rebate under § 7-1006 of this subtitle."

The PSC is in the process of implementing the DRIVE Act in Public Conference 44.[1] On July 11, 2024, the PSC issued Order No. 91218, which among other things directed investor-owned electric companies to submit proposed pilot programs or temporary tariffs by July 1, 2025. Order No. 91218 also solicited comments on the advisability of requiring an electric utility incentive or rebate for renewable on-site generating systems to supplement other available state and federal incentives. On October 25, 2024, the PSC issued Order No. 91391, which among other things authorized—but did not require—utilities to propose DRIVE Act incentive programs. Order No. 91391 also stated that any ratepayer-funded DRIVE Act program should "include a rate design that avoids both imposing program costs on LMI customers and using regulatory assets."[2]

On December 19, 2024, Baltimore Gas and Electric Company ("BGE"), Potomac Electric Power Company ("Pepco"), and Delmarva Power & Light Company ("Delmarva") requested clarification of Order No. 91391. Specifically, the utilities requested clarification of "whether the Commission intended for the avoidance of the use of a regulatory asset only for incentives or whether the Commission intended that the entirety of a proposed DRIVE Act program should avoid the use of a regulatory asset."[3] On January 31, 2025 the PSC issued a notice clarifying that its proscription against the use of regulatory assets "applies to DRIVE Act *incentive* programs and not necessarily all DRIVE Act programs themselves. Utilities may request the use of regulatory assets for *non-incentive* DRIVE Act programs when they submit their program proposals. The PSC will evaluate any such requests when it evaluates DRIVE Act program proposals."[4]

Comments

OPC opposes subsection 7-1007(b) as proposed. While we understand an amendment will be offered to drop the subsection, the burden it would impose on ratepayers nevertheless deserves elaboration. Contrary to Order No. 91391, the subsection would have required the PSC to allow utilities to use regulatory assets to

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[1] *See* Administrative Docket Number: PC 44, *In the Matter of Transforming Maryland's Electric Distribution Systems to Ensure that Electric Service is Customer-Centered, Affordable, Reliable, and Environmentally Sustainable in Maryland, available at* https://webpscxb.psc.state.md.us/DMS/pc/pc44.
[2] PSC Order No. 91391 at 4.
[3] PC 44, Docket Entry No. 396 at 2.
[4] PC 44, Docket Entry No. 404 at 3 (emphasis added).

recover all of their DRIVE Act program costs, including the cost of rebates and other incentives. This mandate, which has no precedent in any existing PUA statute, would needlessly increase the cost of DRIVE Act programs without providing any benefits for utility customers.

Regulatory assets are an accounting mechanism whereby non-capital expenditures are deferred on the utility's books for recovery in the future—typically on an amortization schedule over a period of years—rather than recovered in the year they are incurred, or "expensed." Expensing is the general rule for utility operating and maintenance costs and other non-capital expenditures. Historically, the PSC has sometimes approved the use of regulatory assets for extraordinary and non-recurring expenditures, such as expenditures in response to the COVID-19 pandemic. After the PSC determines that the expenditures recorded to a regulatory asset are reasonable and prudent, the regulatory asset is moved into a utility's rate base—i.e., it is capitalized. As a result of the capitalization, the utility often is permitted to receive its authorized return on the non-capital expenditures recorded to the regulatory asset as though they were physical assets like electricity poles and wires or gas pipelines.

In prohibiting the use of regulatory assets for DRIVE Act incentives, the PSC acted in a manner consistent with its 2022 decision[5] to end utilities' use of regulatory assets to recover EmPOWER costs—a decision ratified by the General Assembly in House Bill 864 of 2024. The basis of both decisions is that allowing regulatory asset treatment for regularly recurring expenses like customer incentives unnecessarily increases the cost of the incentive program, and therefore customer bills. Continually deferring incentives and other program costs to regulatory assets is like charging those costs to a credit card and making the minimum payment every month. The result in the EmPOWER program was ever-growing unamortized balances that served no purpose except to generate utility profits. Using regulatory assets for DRIVE Act incentives would have the same result.

Requiring the PSC to allow utilities to capitalize the cost of DRIVE Act incentives would also be inappropriate because there is virtually no risk in providing PSC-approved incentives to customers pursuant to a PSC-approved program. A utility's PSC-authorized rate of return is supposed to approximate the return earned by investors in businesses that operate in competitive markets and present similar levels of investor risk. Investing in a capital asset always involves some level of risk. By contrast, if a utility provides a DRIVE Act incentive, it will be because the PSC has approved the utility's incentive program, in which case there is virtually no risk of non-recovery. Any profits a utility is allowed to earn on incentives would therefore be windfall profits.

[5] *See* PSC Order No. 90456.

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In Order No. 91391, the PSC correctly disallowed the use of regulatory assets to recover the cost of DRIVE Act incentives. This decision was clearly permitted under the Act and protects utility customers from unnecessarily and unreasonably high costs for DRIVE Act programs.

Proposed section 7-1005(g) states that nothing in PUA § 7-1005 "may be construed to prohibit an electric company, private entity, or aggregator of distributed energy resources from offering energy storage to residential customers separate from the pilot program or temporary tariff." This provision is not necessary because when section 7-1005 is read in the context of other sections of the PUA, it is clear that it cannot be construed to include such a prohibition. PUA § 7-223(e) clearly authorizes utilities to propose storage incentives through their EmPOWER programs, and PUA § 7-216.1, which requires that the PSC establish targets for the Maryland Energy Storage Program, also allows for storage programs and incentives outside of the DRIVE Act. Moreover, as far as OPC is aware, no party has interpreted section 7-1005 as preventing utilities and non-utility companies from offering storage outside of the Act.

OPC appreciates the opportunity to provide these comments on HB 1419.